

**COMMONWEALTH OF VIRGINIA  
STATE AIR POLLUTION CONTROL BOARD  
REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION**

**PRELIMINARY DETERMINATION REVIEW DOCUMENT FOR  
PROPOSED REGULATION REVISION C97  
CONCERNING**

**EMISSION STANDARDS FOR MOBILE SOURCES  
(9 VAC 5 CHAPTER 40)**

**PROVISIONS AFFECTED (TENTATIVE DETERMINATION)**

Emission Standards for Mobile Sources (Article 41; 9 VAC 5-40-5650 et seq.)

**REASON FOR PROPOSED REGULATION**

The regulation amendments (repeal of the provisions cited above) are being proposed because they have been determined to be no longer required by federal mandate pursuant to the review of existing regulations mandated by Executive Order 15(94).

**STATEMENT OF LEGAL AUTHORITY**

Section 10.1-1308 of the Virginia Air Pollution Control Law (Title 10.1, Chapter 13 of the Code of Virginia) authorizes the State Air Pollution Control Board to promulgate regulations abating, controlling and prohibiting air pollution in order to protect public health and welfare.

**STATEMENT OF STATUTORY MANDATES**

The regulation was originally mandated by federal law or regulation. A succinct statement of the source (including legal citation) and scope of the mandate may be found below. A copy of all cited legal provisions is attached.

Section 110(a) of the Clean Air Act (CAA) mandates that each state adopt and submit to EPA a plan which provides for the implementation, maintenance, and enforcement of each primary and secondary air quality standard within each air quality control region in the state. The state implementation plan shall be adopted only after reasonable public notice is given and public hearings are held. The plan shall include provisions to accomplish, among other tasks, the following:

(1) establish enforceable emission limitations and other control measures as necessary to comply with the provisions of the CAA, including economic incentives such as fees, marketable permits, and auctions of emissions rights;

(2) establish schedules for compliance; and

(3) prohibit emissions which would contribute to nonattainment of the standards or interference with maintenance of the standards by any state.

40 CFR Part 51 sets out requirements for the preparation, adoption, and submittal of state implementation plans. These requirements mandate that any such plan shall include several provisions, including those summarized below.

Subpart G (Control Strategy) specifies the description of control measures and schedules for implementation, the description of emissions reductions estimates sufficient to attain and maintain the standards, time periods for demonstrations of the control strategy's adequacy, an emissions inventory, an air quality data summary, data availability, special requirements for lead emissions, stack height provisions, and intermittent control systems.

Subpart K (Source Surveillance) specifies procedures for emissions reports and record-keeping, procedures for testing, inspection, enforcement, and complaints, transportation control measures, and procedures for continuous emissions monitoring.

Subpart L (Legal Authority) specifies the requirements for legal authority to implement plans.

Section 51.230 under Subpart L specifies that each state implementation plan must show that the state has the legal authority to carry out the plan, including the authority to perform the following actions:

(1) adopt emission standards and limitations and any other measures necessary for the attainment and maintenance of the national ambient air quality standards;

(2) enforce applicable laws, regulations, and standards, and seek injunctive relief;

(3) abate pollutant emissions on an emergency basis to prevent substantial endangerment to the health of persons;

(4) prevent construction, modification, or operation of a facility, building, structure, or installation, or combination thereof, which directly or indirectly results or may result in emissions of any air pollutant at any location which will prevent the attainment or maintenance of a national standard;

(5) obtain information necessary to determine whether air pollution sources are in compliance with applicable laws, regulations, and standards, including authority to require record-keeping and to make inspections and conduct tests of air pollution sources;

(6) require owners or operators of stationary sources to install, maintain, and use emission monitoring devices and to make periodic reports to the state on the nature and amounts of emissions from such stationary sources; and

(7) make emissions data available to the public as reported and as correlated with any applicable emission standards or limitations.

Section 51.231 under Subpart L requires the identification of legal authority as follows:

(1) the provisions of law or regulation which the state determines provide the authorities required under this section must be specifically identified, and copies of such laws or regulations must be submitted with the plan; and

(2) the plan must show that the legal authorities specified in this subpart are available to the state at the time of submission of the plan.

### **STATEMENT OF CONCLUSIONS**

The regulation is no longer essential (i) to protect the health, safety or welfare of citizens or (ii) for the efficient and economical performance of an important governmental function. It now exceeds the specific minimum requirements of legally binding state and federal mandates. An explanation as to how this conclusion was reached is set forth below.

The regulation is no longer needed for air quality planning purposes. The regulation was adopted in order to implement the policy set forth in the Virginia Air Pollution Control Law and to fulfill the Commonwealth's responsibilities under the Federal Clean Air Act to provide a legally enforceable State Implementation Plan for the control of criteria pollutants. These statutes still remain in force, but the provisions that initiated adoption of the regulation have changed.

Analysis reveals that the regulation is not consistent with applicable state and federal regulations, statutory provisions, and judicial decisions. Factors and circumstances (federal statutes, original intent, state air quality program and air pollution control methodology and technology) which justified the initial issuance of the regulation have changed to a degree that would justify a change to the basic requirements of the regulation.

Federal guidance on states' approaches to air pollution control has varied considerably over the years, ranging from very general in the early years of the Clean Air Act to very specific in more recent years. This regulation, Rule 4-41, was adopted in 1972, when no detailed guidance existed. Therefore, the legally binding federal mandate for this regulation is general, not specific, consisting of the Clean Air Act's broad-based directive to states to meet the air quality standard for particulate matter, which is emitted by mobile sources.

Since Rule 4-41 was adopted in 1972, important changes have been made to the State Implementation Plan which have resulted in significantly better control of the emissions this regulation was designed to limit. For instance, under the 1990 amendments of the Clean Air Act, all motor vehicles in Virginia's metropolitan urban areas (two million vehicles out of the statewide total of five million) are now or will soon be subject to inspection and maintenance (I/M) programs, which will provide for a higher level of stringency for control of visible emissions and other pollutants than the level provided for by Rule 4-41. In addition, the enforcement of anti-tampering prohibitions is accomplished through statewide safety inspections carried out by the State Police. (The anti-tampering provisions of Rule 4-41 merely duplicate those of § 46.2-1048 of the Code of Virginia.) In light of these newer and more effective controls, the regulation should be rescinded.

## **STATEMENT OF PROCESS FOR CONSIDERING ALTERNATIVES**

Alternatives to the proposed regulation amendments are being considered by the department. The department has tentatively determined that the third alternative is appropriate, as it is the least burdensome and least intrusive alternative that fully meets the purpose of the regulation amendments. The alternatives being considered by the department are discussed below.

1. Take no action to amend the regulation. This option is not being selected for the reason specified below in 3.
2. Make alternative regulatory changes to those required by the provisions of the legally binding state or federal mandates. This option is not being selected because no such changes are warranted.
3. Amend the regulation to satisfy the provisions of the legally binding state or federal mandates. This option is being selected because the regulation is no longer needed for air quality planning purposes. Since the adoption of this rule, changes to the State Implementation Plan have resulted in more effective methods to control the emissions this regulation was designed to limit. The inspection and maintenance programs mandated by the 1990 Clean Air Act for Virginia's metropolitan urban areas will provide for a higher level of stringency for control of visible emissions and other pollutants than the level provided for by Rule 4-41. In addition, the enforcement of anti-tampering prohibitions is accomplished through statewide safety inspections carried out by the State Police.

As provided in the public participation procedures of the State Air Pollution Control Board, the department will include, in the subsequent Notice of Intended Regulatory Action, a description of the above alternatives and a request for comments on other alternatives and the costs and benefits of the above alternatives or the other alternatives that the commenters may provide.

## **STATEMENT OF IMPACT ON FAMILY FORMATION, STABILITY AND AUTONOMY**

In the formulation of these regulation amendments, the department will consider the impact of the regulation amendments on family formation, stability and autonomy. It is not anticipated that these regulation amendments will have a direct impact on families. However, there may be positive indirect impacts in that the regulation amendments will eliminate an unnecessary regulatory burden and its attendant costs to taxpayers.

## **CONTACT PERSON**

Questions on the proposal should be referred to:

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